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MESSAGE

My comments per our telephone call

AM

THIS FAX CONSISTS OF 9 PAGES
INCLUDING THE COVER PAGE

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Date of LOI must be
date \$500k received

Letter of Intent

February 24, 1995

America Online, Inc., a Delaware corporation ("AOL") and Wide Area Information Servers, Inc., a California corporation ("WAIS"), wish to memorialize their present intention to enter into an agreement regarding a merger of WAIS with a wholly-owned subsidiary of AOL upon the following principal terms and conditions.

1. **Structure; Timing.** WAIS will merge with AOL's wholly-owned subsidiary pursuant to a mutually agreed upon Agreement and Plan of Reorganization (the "Agreement"). WAIS will be the surviving corporation. Execution of the Agreement is scheduled for the week of March 20, 1995. The transaction will be accounted for by the pooling of interests method of accounting. The merger will be structured to be tax-free under Section 368(a)(2)(E) of the Internal Revenue Code.

2. **Effect of Merger; Conversion Ratio.** WAIS currently has 7,500,000 shares of Common Stock outstanding, and ~~594,000~~ shares of Common Stock issuable pursuant to options that will be vested on or prior to March 31, 1995, or 92.7% in outstanding shares and 7.3% in vested options. AOL will issue that number of shares of AOL Common Stock which could be purchased for 92.7% multiplied by \$13 million, or \$12,051,000 (with AOL Common Stock valued for such purpose at \$65-per-share (the "AOL Reference Price")) to WAIS's shareholders in return for all outstanding shares of WAIS Common Stock (with the number of shares of AOL Common Stock to be issued in consideration of WAIS Common Stock to be referred to as the "AOL Closing Shares"). Proceeds will be divided among WAIS shareholders in proportion to the common share equivalents of their holdings. Appropriate adjustment will be made to the AOL Closing Shares in the event of any stock split, recapitalization, stock dividend or similar change in AOL's outstanding stock prior to the closing date of the transaction.

3. **Collar.** The number of AOL Closing Shares may be adjusted depending on the average of the closing price per share of AOL Common Stock, as quoted on the Nasdaq National Market and as reported in the Wall Street Journal during the ten trading days ending on the trading day preceding the Closing Date (the "AOL Closing Price"). If the AOL Closing Price is greater than or equal to 85% and less than or equal to 115% of the AOL Reference Price, then the AOL Closing Shares shall remain unchanged. If the AOL Closing Price is less than 85% or more than 115% of the AOL Reference Price, then the number of AOL Closing Shares shall be adjusted ratably so that the AOL Closing Shares multiplied by the AOL Closing Price shall remain constant at 85% (if the AOL Closing Price is less than the AOL Reference Price) or 115% (if the AOL Closing Price is greater than the AOL Reference Price) of \$12,051,000. Notwithstanding the foregoing, if the AOL Closing Price is less than 85% of the AOL Reference Price, AOL will have the right in good faith to renegotiate the consideration to be paid and to terminate the agreement if mutual agreement on that point cannot be achieved.

Please advise whether pooling
is a condition of the deal

Yes

We prefer
No collar;
\$65/share
& each side
takes the
risk of
future price
movements

15% of shares

4. **Treatment of Options.** WAIS options will be converted into AOL options for corresponding AOL Common Stock, with the number of shares and exercise price proportionally adjusted to give effect the conversion formula described above. There are currently 1,890,000 options outstanding, and WAIS understands that any additional options to purchase WAIS Common Stock will be canceled at the closing and replaced by the options described under "Grant of Stock Options at Closing" below. Continuous employment with WAIS will be credited to an optionee for the purposes of determining the number of shares subject to exercise after the merger. The term, exercisability, vesting schedule and all other terms of the options will remain otherwise unchanged. That is, no options will be accelerated solely as a result of the merger. AOL will cause the shares of Common Stock issuable upon exercise of assumed options to be registered with the SEC on Form S-8, such that such shares will be freely tradeable, subject to the volume and manner of sale restrictions imposed by Rule 144 on affiliates of AOL.

5. **Post Merger Employment Benefits.** Employees of WAIS who become employed by AOL after the merger will become eligible (within a reasonable period after the closing of the merger) to participate in the same employee benefit plans as are generally available to similarly situated employees of AOL.

6. **Grant of Stock Options at Closing.** Upon closing of the merger, the following options to purchase AOL Common Stock will be granted under AOL's standard employee equity plan, in each case with an exercise price equal to the closing price of AOL Common Stock on the trading day immediately prior to closing:

- (i) **Brewster Kahle Option.** Mr. Kahle will receive an option to purchase shares with an aggregate exercise price of \$3,500,000. Such option will vest as to 1/2 of the shares on the second anniversary of the closing date, with an additional 1/4 of the shares vesting on the third and fourth anniversaries of the closing date. *Standard AOL schedule at AOL* *Monthly thereafter*
- (ii) **Options for Current Employees.** Options to purchase shares with an aggregate exercise price of \$2,500,000 will be granted to other employees of WAIS who are employed as of the date hereof and who remain employed at the closing date. Such options will have standard, ratable 4 year vesting, with the first vesting date at the first anniversary of the closing date. The allocation of these options will be specified by Mr. Kahle in the Agreement and will be subject to the reasonable approval of AOL.
- (iii) **Options for New Employees.** Options to purchase shares with an aggregate exercise price of up to \$2,000,000 will be granted to other employees of WAIS who are hired after the date hereof and who are employed at the closing date. Such options will have standard, ratable 4 year vesting. The allocation of these options will be specified by Mr. Kahle from time to time prior to closing and will be subject to the reasonable approval of AOL.

Consent to include in S-8

if any,

7.

Noncompetition Agreements.

employees to be identified in the Agreement will be requested to execute noncompetition and nonsolicitation agreements with a term equal to the longer of 2 years from closing and 1 year after termination of employment (but in no event longer than 3 years from closing). No separate consideration will be paid for the entry into such agreements, other than the issuance of shares and/or the assumption of options in the merger.

Mr. Kahle

Same agreement that other members of senior management of acquired companies have signed

8.

Securities Law Compliance: Resale Restrictions.

AOL will issue the shares in the merger pursuant to the "private placement" exemption from registration under the Securities Act of 1933, and the shares received by WAIS shareholders in the merger will therefore be restricted securities within the meaning of Rule 144 and will not be eligible for resale under Rule 144 for a period of two years following the merger.

AOL will grant the former WAIS shareholders piggy back registration rights on any public offerings by AOL or by other WAIS shareholders during that two year period. The pooling rules require that there be no sales by WAIS affiliates of their WAIS stock or AOL stock issued in exchange therefor for the period commencing 30 days prior to consummation of the merger and ending at such time as financial statements covering 30 days of combined operations of the two companies are publicly released (this is the "pooling lock up period"). WAIS affiliates will be required to acknowledge and agree in writing to the foregoing resale restrictions. AOL affiliates will be subject to similar restrictions.

These must be 2 demand registrations; willing to put \$1,000,000 minimum deal

9.

Corporate Approval: Shareholder Pre-Approval.

WAIS represents that its Board of Directors has authorized and approved the execution of this Letter of Intent. WAIS shareholder approval will be required at closing. WAIS and WAIS's officers and directors will use best efforts to cause the shareholders of WAIS to approve the merger and WAIS's directors will recommend that WAIS's shareholders approve the merger. Mr. Kahle will agree to vote in favor of the merger at the time the Agreement is executed.

10.

Representations; Escrow.

Each party will make customary representations and warranties which will expire at the termination of the escrow, below. The Agreement will contain mutual indemnification of each party against breaches of the other's representations, warranties and covenants. An aggregate of 10% of the shares issuable to WAIS's shareholders and vested option holders will be held in escrow as security for WAIS's indemnity obligations. There will be no recoveries from escrow until aggregate claims exceed \$25,000, after which recovery will be from the first dollar. The escrow shall expire upon the earlier of twelve months after the merger or upon release of audited financial results of the combined company.

11.

Due Diligence.

AOL and its attorneys and accountants will have full access to the books and records of WAIS from the date hereof to complete a due diligence investigation of WAIS.

12.

Closing Conditions: Covenants.

Each party's obligations will be subject to customary closing conditions, including (i) those required to implement the deal terms

or AOL's

described above, (ii) approval of the merger by 100% of WAIS's shares, and (iii) approval by the AOL Board of Directors. Closing will also be conditioned on the absence of any material adverse change in WAIS's assets, employee base or business. Closing will be scheduled to occur on or about March 29, 1995. Closing will also be conditioned on satisfactory completion of AOL's due diligence investigation. Customary pre-closing covenants will be included in the Agreement.

① All current shareholders will vote in favor. Any optionees who may exercise before record date will not affect pooling because \$ is too small

13. **No-Shop Provision: Break Up Fee.** WAIS agrees that, until March 29, 1995 or the earlier mutual abandonment of the transaction contemplated hereby, WAIS and Mr. Kahle will not, and will not authorize any officer or director of WAIS or any other person on its behalf to, solicit, encourage, negotiate or accept any offer from any party concerning: (i) the possible disposition of all or any substantial portion of WAIS's business, assets or capital stock by merger, sale or any other means or any other transaction that would involve a change in control of WAIS; or (ii) the sale of any equity or debt securities of WAIS. WAIS will promptly notify AOL in writing of any such inquiries or proposals. If WAIS merges with, or WAIS or its assets are acquired by, a company other than AOL or a wholly-owned subsidiary of AOL during a period of one year after the date hereof based on any discussion during the no-shop period, WAIS (or the acquiring company) will pay AOL a sum of \$5,000,000 and AOL will make no other claims against WAIS or its shareholders regarding this transaction. WAIS shall have no obligations under this Section if AOL unilaterally decides not to proceed with this transaction or causes it not to occur (other than as a result of WAIS's breach of the Agreement or intentional failure to cause a condition of closing to occur). The Agreement will contain a section substantially identical to the foregoing.

immediately

70 back to (plus interest)

14. **Fees and Expenses.** AOL will pay promptly after closing up to \$50,000 of the legal and accounting fees and disbursements incurred by WAIS in connection with the transaction.

\$75K → \$100,000

15. **Hart-Scott-Rodino Compliance.** A Hart-Scott-Rodino Act filing will not be required with respect to the transaction.

reasonable

16. **Public Disclosure.** WAIS will make no public disclosure of the negotiation of the merger without the prior written consent of AOL. AOL will make no public disclosure of the negotiation of the merger unless, in the opinion of its counsel, such disclosure is required by law. The parties agree to issue a joint press release upon signing of the Agreement. The parties will not make any other public announcement of this transaction without the other's prior written consent. WAIS agrees to take reasonable actions to avoid any trading in securities of AOL by WAIS's officers, directors, employees and agents that would be based on material nonpublic information that relates to the proposed merger or that was learned in the due diligence process.

17. **Confidentiality.** Each party acknowledges its continuing obligations under the Nondisclosure Agreement dated [redacted] with respect to matters disclosed during the negotiations and due diligence process contemplated hereby.

of even date herewith

and both AOL and WAIS covenant to use respective best efforts to cause closing to happen by such date

18. **Broker's or Finder's Fees.** AOL and WAIS acknowledge that they have not and will not enter into an agreement with any employees, officers, directors or outside contractors that would result in a broker or finder fee pertaining to the proposed merger.

19. **Continuation of Business.** From the date hereof until the closing, WAIS will preserve and operate its business in the ordinary course and will not enter into any transaction or agreement or take any action out of the ordinary course or enter into any transaction or make any commitment involving a license of intellectual property, an expense or capital expenditure by WAIS in excess of \$50,000 or a commitment of development resources that would extend beyond the closing date, without AOL's written consent.

consistent with past practice

20. **Counterparts.** This Letter of Intent may be executed in counterparts and the counterparts together will constitute a single, fully-executed original.

21. **Nonbinding Document.** This Letter of Intent does not constitute an offer, is not binding (except for the "no shop" provisions of Section 12, the "public disclosure" provisions of Section 13 and the "continuation of business" provisions of Section 19), and is not a definitive agreement. All rights and obligations of the parties are subject to execution of definitive mutually satisfactory agreements and obtaining all required corporate approvals. The parties will use diligent efforts to complete, execute and deliver the Agreement promptly after the date hereof and to close the transaction within the time period set forth above.

This Letter of Intent is executed as of the date first set forth above.

AMERICA ONLINE, INC.

WIDE AREA INFORMATION
SERVERS, INC.

By: _____

By: _____

Its: _____

Its: _____

We don't have conceptual problem with this but WAIS's business is the licensing of its IP and its licenses routinely exceed \$50,000 per. In addition, WAIS is in the process of obtaining a secured line of credit and an equipment lease line.

Brewster Kahle, individually

Insufficient assets available of the (a) lease line & (b) secured lending facility to make AOL loan worth securing. At the very least, AOL must subordinate to commercial lenders to degree necessary to facilitate commercial loans/lease lines.
\$500,000.00

February 27, 1995

WIDE AREA INFORMATION SERVERS, INC.

SECURED PROMISSORY NOTE

1. **Background.** This Secured Promissory Note (this "Note") is made and delivered pursuant to that certain Loan Agreement between Wide Area Information Servers, Inc. and America Online, Inc. dated as of even date herewith (the "Loan Agreement"). Unless otherwise defined in this Note, all capitalized terms used in this Note will have meanings and definitions given to such terms in the Loan Agreement.

, subject to the terms hereof,

2. **Obligation.** For value received, Wide Area Information Servers, Inc., a California corporation ("**Borrower**"), hereby promises to pay to the order of America Online, Inc., a Delaware corporation, or assigns ("**Holder**"), in lawful money of United States of America, on the Payment Date (as defined in Section 3 below), the principal sum of Five Hundred Thousand Dollars (\$500,000.00), together with interest accrued on unpaid principal as provided in Section 4 below.

of an amount equal to or greater than \$2,000,000

3. **Payment Date.** The unpaid principal amount outstanding under this Note, together with all accrued but unpaid interest shall be due and payable in full on the date (the "**Payment Date**") that is the earliest to occur of the following: (a) the first anniversary of the date hereof; (b) the closing of Borrower's next equity financing in which all or any portion of the investors are generally recognized professional venture capital investors who are not currently shareholders of Borrower; (c) the closing of Borrower's initial public offering of securities pursuant to a registration statement filed with and declared effective by the Securities and Exchange Commission; (d) the sale of all or substantially all of the assets of Borrower to any person other than Holder; or (e) the merger or consolidation of Borrower with or into another company (excluding a reincorporation of Borrower into another jurisdiction in which the equity interests of Borrower's shareholders are not changed) or other reorganization of the Borrower following which the shareholders of the Borrower immediately prior to such transaction do not own at least 51% of the company emerging as the survivor or parent company in such transaction, other than such a transaction with Holder.

4. **Interest.** Interest will accrue on the unpaid principal amount of this Note at a rate (computed on the basis of a 360-day year) equal to the lesser of (i) eight percent (8%) per annum or (ii) the maximum interest rate permitted by applicable law. All unpaid interest accrued under this Note will be due and payable in full on the Payment Date.

5. **Payment.** All payments and prepayments made under this Note will be made to Holder at 8619 Westwood Center Drive, Vienna, VA 22182, or at such address as Holder may from time to time direct.

6. **Prepayments.** Unpaid principal and unpaid accrued interest under this Note may be prepaid by Borrower at its option without premium or penalty. All prepayments will be applied first to the payment of interest accrued on this Note and second, if the amount of prepayment exceeds the amount of all such accrued interest, to the payment of principal.

7. **Acceleration on Event of Default.** If any Event of Default (as defined in the Loan Agreement) occurs, then notwithstanding anything in this Note to the contrary, all indebtedness of Borrower to Holder under the Loan Agreement and this Note (including all unpaid principal and unpaid accrued interest) will, at Holder's sole option and without notice, become immediately due and payable in full.

8. **Loan Agreement and Security Agreement.**

(a) **Loan Agreement.** This Note incorporates by reference all the provisions of the Loan Agreement, including but not limited to all provisions contained therein with respect to Events of Default, waivers and remedies, and the description of the benefits, rights and obligations of each of Borrower and Holder under the Loan Agreement.

(b) **Security Agreement.** Performance of Borrower's obligations under this Note is secured by Borrower's grant to Holder of a first priority security interest in all of the assets of Borrower pursuant to that certain Security Agreement between Holder and Borrower dated of even date herewith (the "Security Agreement").

9. **Waiver and Amendment.** Any provision of this Note may be amended or modified only by a writing signed by both Borrower and Holder. No waiver or consent with respect to this Note will be binding or effective unless it is set forth in writing and signed by the party against whom such waiver is asserted. No course of dealing between Borrower and Holder will operate as a waiver or modification of any party's rights or obligations under this Note. No delay or failure on the part of either party in exercising any right or remedy under this Note will operate as a waiver of such right or any other right. A waiver given on one occasion will not be construed as a bar to, or as a waiver of, any right or remedy on any future occasion.

10. **Governing Law.** This Note will be governed by and construed in accordance with the laws of the State of California as applied to agreements between residents thereof to be performed entirely within such state, without reference to that body of law relating to conflict of laws or choice of law.

11. **Waivers by Borrower.** Borrower hereby waives presentment, notice of nonpayment, notice of dishonor, protest, demand and diligence.

12. **Attorneys' Fees.** Borrower agrees to pay Holder's reasonable expenses and costs in enforcing and collecting this Note, including without limitation attorneys' fees and expenses and court costs, whether or not a court case is brought or prosecuted to judgment.

13. **Successors and Assigns.** The provisions of this Note will inure to the benefit of, and be binding on, each party's respective heirs, successors and assigns. Borrower

may not assign or delegate any of its obligations under this note without Holder's prior written consent, and any assignment or delegation without such consent shall be void.

14. **Severability.** The invalidity or unenforceability of any term or provision of this Note will not affect the validity or enforceability of any other term or provision hereof.

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed in its name and delivered to Holder this 27th day of February, 1995.

**WIDE AREA INFORMATION
SERVERS, INC.**

By: _____

Name: _____

Title: _____